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Thomas A O'Rourke
Bodner & O'Rourke, LLP
425 Broadhollow Road
Melville, NY 11747

EXAMINER

WANG, SHENGJUN

ART UNIT PAPER NUMBER

1617

DATE MAILED: 01/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/943,372

Applicant(s)

SOTT, CHERYL

Examiner

Shengjun Wang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13, 16-25 and 37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 16-25 and 37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

Receipt of applicants' amendments and remarks submitted October 8, 2003 is acknowledged.

Claim Rejections 35 U.S.C. 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-13, 16-25 and 37 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for particular personal preferences which could be directly linked to particular essential oil, does not reasonably provide enablement for the "analysis," "value" and correlation ship between the "value" and essential oil for reasons set forth in the prior office action.

2. Claims 1-13, 16-25 and 37 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 recites "an essential oil universe database expressed in electronic media," however, the application fails to provide reasonable written description about the "essential oil universe database." Particularly the application neither provides guidance or direction for obtaining such database, nor gives a clear definition for the database.

3. Claims 1-13,16-25 and 37 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not

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described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 1 recites "an essential oil universe database expressed in electronic media," however, the application neither provides working example, guidance or direction for make and/or use such database, nor give a clear definition for the database.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-13, 16-25 and 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention for reasons set forth in the prior office action.

6. Claim 1 recites "an essential oil universe database expressed in electronic media," however, the specification or the claims fails to provide a definition for the database. The claims are indefinite as to the database encompassed thereby.

Claim Rejections 35 U.S.C. 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-13, 16-25 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rigg et al. (US 5,622,692), in view of Meador et al. (US 5,031,764)

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9. The claimed invention has been broadly interpreted as a method of formulating customized cosmetic product based on the information from the customer. Rigg et al. teaches a method of making customized cosmetic product based on the information obtained from customer. See, particularly, the abstract, and the claims. Rigg particularly suggest to employ computer for processing the data received. See, particularly, figure 1, and column 2, lines 3-67.

10. Rigg does not teach expressly to customize the ingredient of essential oils, or the particular steps herein.

11. However, Meador teaches that method of customizing fragrance based on customer's preference is known in the art. See, particularly, columns 1-3.

Therefore, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to employ the method of Rigg for customizing essential oil composition in a cosmetic product based on customer's preference.

A person of ordinary skill in the art would have been motivated to employ the method of Rigg for customizing essential oil composition in a cosmetic product based on customer's preference because such method would have provide customized product. One of ordinary skill in the art would have been reasonably expected to be able to make a customized essential oil composition since such method is known in the art. The optimization of a result effective parameter, e.g., the detailed steps of a known procedure, including the employment of CPU, is considered within the skill of the artisan. See, In re Boesch and Slaney (CCPA) 204 USPQ 215. Furthermore.

Employment of a customized fragrance composition in various well-known cosmetic forms recited herein is considered within the skill of artisan and is obvious.

Response to the Arguments

Applicants' amendments, exhibits, and remarks submitted October 8, 2003 have been fully considered, but are not persuasive.

Applicants' rebuttal arguments with regard to the "value" of essential oils are germane to the situation at hand. Particularly, the instant claims are drawn to a method comprising steps of: a) performing an analysis of an individual; b) calculating a value from the analysis; c) co-relating the value to particular essential oils; and selecting essential oil based on the results; ...etc. The specification or the claims does not provide sufficient guidance, direction and working example to enable a skilled artisan to fully understand the meanings of "analysis," "calculating," and the "value" herein, and to perform the claimed invention without undue experimentation (see the prior office action). The "value" employed in the claims are "calculated" from the "analysis" of customer. This "value" is not a value of essential oil. The claimed method is an integral of several steps: a) performing an analysis of an individual; b) calculating a value from the analysis; c) co-relating the value to particular essential oils; and selecting essential oil based on the results; ...etc. While table A provide means of analysis, the application does not provide guidance, directions as to how to "calculate" a "value" based on the analysis, or how to co-relating a "value" to essential oil selection.

12. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Particularly, the obvious

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rejections are based on Rigg et al., and Meador et al. As the employment of CPU, note using computer for analyzing data is consider within skill of artisan, see, e.g., Riggs.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang, Ph.D. whose telephone number is (703) 308-4554 ((571)272-0632 after February 3, 2004). The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (703) 305-1877 ((571)272-0629 after February 3, 2004). The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Primary Examiner

A handwritten signature in black ink, appearing to be 'Shengjun Wang', written in a cursive style.

Shengjun Wang

January 23, 2004